(2)

Supreme Court, U.S.
FILED
MAY 7 2000
OFFICE OF THE CLERK

No. 00-1536

IN THE

# Supreme Court of the United States

ROBERT H. WILLIAMS, MELISSA B. WILLIAMS, Individually and as Next Friends of DANIELLE H. WILLIAMS, KRISTEN J. WILLIAMS, and STEPHANIE F. WILLIAMS,

*Petitioners,*

*v.*

GREG GLEASON, BETH GLEASON, ROBERT L. ROANE, ANDREW W. EDWARDS, WILLIAM R. STUCK, NEAL T. HARE, THOMAS W. HARTNETT, JR., ROBERT TOLSMA, WILLIAM A. FITZHENRY, DAVID LEE WAKELAND, GORDON E. LANDRETH, IRVIN M. MAY, JR., ROBERT CHARLES BISHOP, JAMES C. BLAND, DONALD L. GERMAN, E.R. McDANIEL, LAWRENCE S. RUDDELL, MICHAEL L. WILSON, and FRED R. WILLARD,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS FOURTEENTH COURT OF APPEALS

## BRIEF IN OPPOSITION FOR RESPONDENTS LANDRETH, MAY, BISHOP, BLAND, GERMAN, McDANIEL, RUDDELL, WILSON, WILLARD, FITZHENRY AND WAKELAND

STEVEN C. HOWARD
TUCKER, HENDRYX,
SNYDER & SLADE
8 Greenway Plaza, Suite 1200
Houston, Texas 77046
(713) 961-5800

J. SHELBY SHARPE
*Counsel of Record*
SHARPE & TILLMAN
6100 Western Place, Suite 901
Fort Worth, Texas 76107
(817) 338-4900

*Attorneys for Respondents*
*Landreth, May, Bishop, Bland,*
*German, McDaniel, Ruddell, Wilson,*
*Willard, Fitzhenry and Wakeland*

## TABLE OF CONTENTS

*Page*

Table of Cited Authorities ..... ii

Reasons for Denying the Writ ..... 1

I. The Texas Court Of Appeals' Opinion Does Not Conflict With Any Decision Of Any Other Court. ..... 1

II. Neither The Record Nor The Decision Below Raises The Confusingly Stated Questions Presented By The Petition. ..... 13

III. This Case Does Not Have Far-Reaching Implications Because Its Facts Are So Unique. ..... 14

Prayer ..... 15

## TABLE OF CITED AUTHORITES

*Page*

**Cases:**

*Barbouti v. Munden* 866 S.W.2d 288 (Tex. App. – Houston [14th Dist.] 1993, writ den.) ..... 14

*Brown v. Mt. Olive Baptist Church*, 124 N.W.2d 445 (Iowa 1963) ..... 5

*Gonzalez v. Archbishop*, 280 U.S. 1 (1929) ..... 4

*Gray v. St. Matthews Cathedral Endowment Fund*, 544 S.W.2d 488 (Tex. Civ. App. – Texarkana 1976, writ ref'd, n.r.e.) ..... 5

*Higgins v. Maher*, 258 Cal. Rptr. 757 (Cal. 1989) ... 9, 10

*Hill v. Sargent*, 615 S.W.2d 300 (Tex. Civ. App. – Dallas 1981, no writ) ..... 5

*Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385 (Ohio App. 1997) ..... 5, 11

*Kauffman v. Sheehan*, 707 F.2d 355 (8th Cir. 1983) .. 5

*Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952) ..... 4

*Marks v. Estate of Hartgerink*, 528 N.W.2d 539 (Iowa 1995) ..... 5

*Patterson v. Southwestern Baptist Seminary*, 858 S.W.2d 602 (Tex. App. – Fort Worth 1993, no writ) ..... 5, 6

*Cited Authorities*

*Page*

*Paul v. Watchtower Bible & Tract Soc. of New York*, 819 F.2d 875 (9th Cir. 1987) ..... 5

*Presbyterian Church v. Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) ..... 4, 12

*Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) .....3, 4, 6, 7

*Simpson v. Wells Lamont Corporation*, 494 F.2d 490 (5th Cir. 1974) ..... 5

*Tran v. Fiorenza*, 934 S.W.2d 740 (Tex. App. – Houston [1st Dist.] 1996, no writ) ..... 7, 8

*Watson v. Jones*, 80 U.S. 679 (1871) .....3, 4, 5, 12

**United States Constitution:**

First Amendment ..... 6, 13

Fourteenth Amendment ..... 6, 13

**Other Authority:**

Article 1, Section 6 of the Texas Constitution .... 6

## REASONS FOR DENYING THE WRIT

Petitioners have enumerated nineteen questions presented for review. In summary, Petitioners argue that the Texas court of appeals improperly found their numerous claims were not a proper subject of civil court adjudication because they were in reality ecclesiastical disputes; that summary judgment was wrongly granted based upon the evidence before the court; and that the court did not reverse the trial court for denying them any opportunity to investigate their claims. However, the court of appeals' opinion clearly reveals that an examination of the substance of all of the claims is ecclesiastical and outside civil court inquiry and adjudication and that on its face does not conflict with any decision of any other court, state or federal. As to the record, it not only supports the court of appeals' decision, but reveals that the complaints about discovery and certain claims not being expressly addressed were waived by Petitioners and not before the court of appeals. This case does not have far-reaching implications due to its unique facts. In all events, the court of appeals' opinion is correct, and the petition for writ of certiorari should be denied.

### I.

### THE TEXAS COURT OF APPEALS' OPINION DOES NOT CONFLICT WITH ANY DECISION OF ANY OTHER COURT.

In order to properly determine whether review of the Texas court of appeals' decision is appropriate, the starting point should be an examination of the opinion. The opinion begins by stating the issue before the court to be whether there is "subject matter jurisdiction to decide an ecclesiastical

dispute." The opinion observes that the suit arose out of church disciplinary proceedings. After enumerating the claims, the opinion describes the motions for summary judgment which were filed shortly after the answers to the suit. Petitioners' response, the opinion notes, was unaccompanied by any evidence.

The essential facts are outlined in the opinion. They are summarized as follows:

Petitioners vowed to submit themselves to the government and discipline of the Presbyterian church they joined. Church elders questioned Petitioner Robert Williams about his Sunday School teaching contrary to the Presbyterian church. Subsequently, Petitioners Robert and Melissa Williams "brought a complaint with the local church's judiciary, the Session", concerning the elders' conduct in addressing the teaching issue. The Session received evidence and conducted an investigation culminating in a ruling not to censure the elders. The congregation was informed of the decision without identifying any persons. Petitioners took an unsuccessful appeal to the "next level of the church judiciary, the Presbytery." While the appeal was in process, the local church session brought disciplinary action against Petitioners Robert and Melissa Williams for inappropriate statements made against the elders. After a trial in which Petitioners Robert and Melissa Williams declined to participate, although present, the Session voted to temporarily prohibit them from participating in communion. Again, Petitioners took an unsuccessful appeal to the Presbytery. All of the claims against Respondents Landreth, May, Bishop, German, McDaniel, Ruddell, Wakeland, and Fitzhenry arise out of their participation in the two appeals to the Presbytery.

After setting forth the pertinent factual background, the opinion proceeded to acknowledge the longstanding rule of law that the Constitution of the United States forbids "interfering with the right of hierarchial religious bodies to establish their own internal rules and regulations and to create tribunals for adjudicating disputes over religious matters." *Serbian Orthodox Diocese v. Milivojevich*[1] and several Texas intermediate appellate court decisions were cited as authority. The court then examined the substance and effect of Petitioners' petition to determine if there were any actionable claims involving "property rights, torts, or criminal conduct" over which the civil courts do have subject matter jurisdiction. None were found, and the summary judgment was affirmed.

Following an analysis of the opinion, it is incumbent to measure the opinion by other opinions addressing similar situations. Obviously, the pertinent opinions of this Court must be considered first.

The Court in *Watson v. Jones*[2] declared that "civil courts exercise no jurisdiction" over "a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standards of morals required of them." Interestingly, *Watson* involved a Presbyterian church, too. Early in that opinion the Court explained why ecclesiastical disputes must be left in the hands of the ecclesiastical government, to wit:

> **But it is easy to see that *if the civil courts are to inquire into* all these matters, *the whole subject***

1. 426 U.S. 696, 708-09 (1976).

2. 80 U.S. 679, 733 (1871).

> ***of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination*** **may, and must, be examined into with minuteness and care,** ***for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would*** **deprive these bodies of the right of construing their own church laws . . . and would,** ***in effect, transfer to the civil courts . . . the decision of all ecclesiastical questions.***[3] (Emphasis added.)

*Watson* concluded that "if the civil courts are to inquire into . . . the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination" because these matters would be essential for the "civil court" to reach a decision, it would "in effect, transfer to the civil courts . . . the decision of all ecclesiastical questions."[4]

This immunity or abstention, described by some courts, and postulated in *Watson* has repeatedly been reaffirmed by the Court.[5] Even when the effect of the ecclesiastical decision deprives a person of income and property as occurred in *Milivojevich*[6] and *Kedroff*[7], the courts are still not to involve themselves.

---

3. 80 U.S. 733-34.

4. 80 U.S. 734.

5. *Gonzalez v. Archbishop*, 280 U.S. 1 (1929); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Presbyterian Church v. Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

6. 426 U.S. 710-11.

7. 344 U.S. 107-08.

The Petitioners argue that *Watson* and its progeny do not apply to them because they were not employees of the church. This is a specious argument because nowhere in any of these cases has this Court, or any other court for that matter, limited these decisions to ecclesiastical employees or officials. In fact, other courts have applied *Watson* to persons who are not church officials.[8]

*Watson* and its progeny have also been followed by the state courts, according to the opinion of the Texas court of appeals. The courts of Texas have been very consistent in holding that the civil courts are prohibited from interfering in purely ecclesiastical or administrative affairs of religious bodies.[9] It is the general rule, the *Gray v. St. Matthews Cathedral Endowment Fund* decision of the Texarkana Court of Civil Appeals stated, that courts will not intervene as far as the internal or purely ecclesiastical or spiritual features of a church or religious society are concerned.[10] As recently as 1993, the Fort Worth court of appeals' opinion in *Patterson v. Southwestern Baptist Seminary* observed that civil courts

8. *Paul v. Watchtower Bible & Tract Soc. of New York*, 819 F.2d 875 (9th Cir. 1987); *Simpson v. Wells Lamont Corporation*, 494 F.2d 490 (5th Cir. 1974); *Kauffman v. Sheehan*, 707 F.2d 355 (8th Cir. 1983); *Brown v. Mt. Olive Baptist Church*, 124 N.W.2d 445 (Iowa 1963); *Marks v. Estate of Hartgerink*, 528 N.W.2d 539 (Iowa 1995); *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385 (Ohio App. 1997).

9. *Patterson v. Southwestern Baptist Seminary*, 858 S.W.2d 602, 606 (Tex. App. - Fort Worth 1993, no writ); *Hill v. Sargent*, 615 S.W.2d 300, 301 (Tex. Civ. App. - Dallas 1981, no writ); *Gray v. St. Matthews Cathedral Endowment Fund*, 544 S.W.2d 488, 492 (Tex. Civ. App. - Texarkana 1976, writ ref'd, n.r.e.).

10. 544 S.W.2d 492.

are bound to accept decisions of the highest judicatories of a religious organization as to matters of discipline, faith, internal organization or ecclesiastical rule, custom or law.[11]

The *Patterson* decision is very instructive here. Patterson appealed a summary judgment denying him recovery in his wrongful termination suit against Southwestern Baptist Theological Seminary. The trial court granted summary judgment on the ground that under the First and Fourteenth Amendments to the United States Constitution and Article 1, Section 6 of the Texas Constitution, the decisions of religious organizations regarding ecclesiastical matters must be accepted by the trial court.[12] Patterson contended that a genuine fact issue existed as to whether his procedural and substantive rights under the seminary bylaws were violated. Citing *Miliovejevich*, the court of appeals held:

> **Where religious organizations establish such guidelines and have tribunals for adjudicating disputes over these matters, the Constitution requires that civil courts accept their decisions as binding upon them.**[13]

In addition to his substantive rights, Patterson argued, as Petitioners have, that his procedural rights had been violated. Patterson unsuccessfully tried to persuade the court that his case was only an employment contract dispute and that the court had jurisdiction to hear it because it could be resolved

---

11. 858 S.W.2d 606.

12. 858 S.W.2d 603.

13. 858 S.W.2d 205-06.

by applying "neutral principles of law."[14] The court of appeals reasoned that *Miliovejevich* prohibited the civil courts from making even this kind of inquiry:

> **The current case is most similar to *Miliovejevich*, in which the court concluded that the civil court may not decide whether the church complied with the procedural rules contained in the church constitution and penal code in defrocking one of its bishops.**
>
> **The court also announced the trial court may not use the guise of the "neutral principles" approach to delve into issues concerning whether the general church acted beyond its authority under the church constitution in declaring a reorganization of the Diocese.** *Id.* **Just as the church constitution concerns the internal governance of the Diocese, the bylaws concern the internal governance of the Southwestern Baptist Theological Seminary. Therefore, the trial court could not delve into issue concerning whether Patterson's employment was terminated in accordance therewith.**[15]

Even in actions for libel, slander and intentional infliction of emotional distress that are alleged to arise out of ecclesiastical proceedings, the Houston First District Court of Appeals' decision of *Tran v. Fiorenza* stands for the

---

14. 858 S.W.2d 606.

15. 858 S.W.2d 606.

proposition that the civil courts should refrain from acting even in those instances.[16] In *Tran*, Father Tran and his congregation informed the Catholic Diocese of Beaumont, Texas, they were separating from the main body of the church and joining the Traditionalist Catholic Sect.[17] In 1993, Professor Fastiggi, a religious studies professor at a Catholic university in Austin, wrote a letter to Bishop Fiorenza inquiring about Father Tran's standing with the church.[18] Fiorenza responded that Father Tran was excommunicated, was not in good standing and "says mass to a small number of people, including elderly women who have been deceived by him."[19] Lastly, Bishop Fiorenza sent a memorandum to "all pastors" to refrain from advertising or encouraging parishioners to attend a mass "being offered by a Reverend Khoat Tran, an excommunicated priest who has left the Catholic Church by a formal act."[20] Father Tran's suit against Bishop Fiorenza was for libel and intentional infliction of emotional distress, alleging that the statements contained in Fiorenza's correspondence were false.[21] The court held:

> **As Bishop of the Galveston-Houston diocese, Fiorenza's administrative duties include informing members of the Catholic Church of**

---

16. 934 S.W.2d 740 (Tex. App. - Houston [1st Dist.] 1996, no writ).

17. 934 S.W.2d 742.

18. 934 S.W.2d 742.

19. 934 S.W.2d 742.

20. 934 S.W.2d 741.

21. 934 S.W.2d 741.

> **the status of its clergy. We believe that statements made by a Bishop in carrying out his administrative duties concerning an excommunication made before, during or after an excommunication, are all part of an ecclesiastical transaction - the divestiture of priestly authority.**[22]

Thus, the ecclesiastical exemption from suit was even broad enough to protect Bishop Fiorenza from any liability for his statement that Father Tran had deceived elderly women in his congregation because such statement was made within the scope of his administrative duties as a Bishop.

A sister state appellate court in California in *Higgins v. Maher*, cited in the Texas court of appeals' opinion, further illustrates that the opinion for which review is sought is not contrary to other court opinions. In *Higgins*, the court interpreted the ecclesiastical privilege to extend absolute immunity to persons acting within the scope of their administrative duties for the church for the torts of invasion of privacy, defamation, and the intentional and negligent infliction of emotional distress.[23] The *Higgins* opinion analyzed the plaintiff's complaint for failure to state an actionable claim before the civil courts as follows:

> **Higgins has pleaded the essential elements of the torts of invasion of privacy, defamation, and the intentional and negligent infliction of emotional distress. His pleading is plain and**

---

22. 934 S.W.2d 744.

23. 258 Cal. Rptr. 757 (Cal. 1989).

**direct in terms of accusing the Bishop and other church hierarchy of unwarranted and malicious conduct which caused him severe damage. Had these allegations been set forth without the preamble showing their genesis in the priest-bishop relationship, it is doubtful they could have been dismissed on demurrer.**

**We know not only that the Bishop has defamed Higgins, violated his privacy and caused him emotional distress. We know that the acts so taken were part and parcel of the Bishop's administration of his ecclesiastical functions. We have established, above, that the Bishop is answerable only to canonical authorities for him misdeeds in the wrongful treatment of a priest, in terms of ecclesiastical as distinguished from civil spheres. If, as part of procedures resulting in the defrocking of a priest, the Bishop makes false accusations, we restrain the civil authorities from becoming involved. The accusations, false or not, pertain directly to the ecclesiastical functions of the church, and we deign not to become involved. When we know that torts such as those of which Higgins complains occurred as inseparable parts of a process of divestiture of priestly authority, we are most reluctant to sever them from the privileged aura of what might be called ecclesiastical exemption.**[24]

---

24. 258 Cal. Rptr. 761 (Cal. 1989).

Another example of how the Texas court of appeals' opinion is consistent with that of other state courts is found in *Howard v. Covenant Apostolic Church, Inc.*[25] There, a church was sued by one of its members who claimed he was injured as a result of being disfellowshipped by the church.[26] The trial court found that the alleged causes of action "were ecclesiastical in nature and, therefore, beyond the jurisdiction of any state court."[27] The appellate court affirmed the decision.[28]

Appellant argued, as Petitioners argue here, that the conduct of the leadership of the church caused him severe emotional distress, defamed him, and that he felt in physical danger when he attempted to attend church services.[29] It was alleged in the suit that the constitution and bylaws of the church had been violated.[30]

The Ohio court of appeals in addressing the issue of whether or not the bylaws and constitution had been violated, wrote that "whether the church followed its internal procedures is a matter of church governance and discipline into which a secular court is prohibited from inquiring."[31]

---

25. 705 N.E.2d 385 (Ohio App. 1 Dist. 1997).

26. 705 N.E.2d 386.

27. 705 N.E.2d 386.

28. 705 N.E.2d 381.

29. 705 N.E.2d 386.

30. 705 N.E.2d 386.

31. 705 N.E.2d 387.

The court cited as authority for this proposition *Watson v. Jones*, *Presbyterian Church v. Blue Hull Memorial Presbyterian Church*, and *Serbian E. Orthodox Diocese v. Milivojevich*.[32]

The court also rejected the argument that because appellant was a member of the church and not a pastor, the court decisions did not apply to him.[33] The court reasoned that internal church governance is beyond the jurisdiction of the secular courts regardless of whether it involves a church member or a member of the clergy.[34]

In holding against appellant's claims for defamation, the court observed that the statements in question either took place within a meeting of the church or in connection with church action.[35] All of the statements alleged to be defamatory were totally intertwined in ecclesiastical matters.[36]

Although Petitioners argue their claims are "garden variety" torts, an examination of each reveals that an essential element involves ecclesiastical doctrine and/or procedure. The court of appeals properly recognized this as have the other courts cited in this response.

---

32. 705 N.E.2d 387.

33. 705 N.E.2d 388.

34. 705 N.E.2d 388.

35. 705 N.E.2d 388.

36. 705 N.E.2d 388-89.

It has been the practice of this Court not to take an appeal except where a published opinion clearly contradicts either a decision of this Court or of other courts so as to create a far-reaching problem. No conflict has been found.

## II.

## NEITHER THE RECORD NOR THE DECISION BELOW RAISES THE CONFUSINGLY STATED QUESTIONS PRESENTED BY THE PETITION.

The record reflects motions for summary judgment based on judicial admissions in Petitioners' pleading and summary judgment evidence accompanying the motions that attack all of Petitioners' claims that were appealed to the Texas court of appeals as being barred by the First Amendment to the Constitution of the United States as read into the Fourteenth Amendment due process clause. There was nothing unusual about the motions, the trial court's ruling on them, and the review of the motions by the court of appeals. At the hearing on the motions for summary judgment, Petitioners, by announcing ready for the hearing on motions for summary judgment, waived any objection concerning discovery and prematurity of the motions. Subsequent to the granting of the motions for summary judgment, Petitioners filed documents with the district clerk and the clerk of the court of appeals and argue these should be considered in reviewing the trial court judgment. These documents, which Petitioners still contend should be considered, were properly ignored by the court of appeals and the trial court.

On appeal, Petitioners presented no points or issues to the court of appeals for claims of breach of fiduciary trust,

breach of fiduciary and other responsibilities, negligence, false imprisonment, religious prosecution, conspiracy, extortion and blackmail, Racketeer Influenced and Corrupt Organization Acts violation, false and misleading advertising and fraud, and due process that were presented to the trial court. Under Texas law, according to *Barbouti v. Munden*[37], those claims determined in the trial court judgment were final and not before the court of appeals. Accordingly, the balance of the matters that were before the court of appeals were decided based upon decisions of this Court with citation to state court decisions that had followed this Court's decisions. Nothing in the record or the court of appeals' decision presents any matter for this Court to consider.

## III.

## THIS CASE DOES NOT HAVE FAR-REACHING IMPLICATIONS BECAUSE ITS FACTS ARE SO UNIQUE.

In the petition, Petitioners maintain that the opinion of the Texas court of appeals will have far-reaching implications by erroneously arguing that it conflicts with numerous decisions of this Court and other courts. Petitioners have not presented a single opinion that conflicts. The preceding sections of this response demonstrate the falseness of Petitioners' contention. But for the fact that his case was brought by *pro se* plaintiffs, it is highly unlikely that another will arise like it.

Regardless, the Court will find when the record and the opinion are considered in light of the applicable case law,

---

37. 866 S.W.2d 288, 298 (Tex. App. - Houston [14th Dist.] 1993, writ den.).

that the opinion is correct and consistent with those decisions. This case simply raises no significant issue that has not been well-decided.

## PRAYER

For all of the foregoing reasons, Respondents respectfully request that this honorable Court deny the petition.

Respectfully submitted,

STEVEN C. HOWARD
TUCKER, HENDRYX,
SNYDER & SLADE
8 Greenway Plaza,
Suite 1200
Houston, Texas 77046
(713) 961-5800

J. SHELBY SHARPE
*Counsel of Record*
SHARPE & TILLMAN
6100 Western Place,
Suite 901
Fort Worth, Texas 76107
(817) 338-4900

*Attorneys for Respondents*
*Landreth, May, Bishop, Bland,*
*German, McDaniel, Ruddell, Wilson,*
*Willard, Fitzhenry and Wakeland*